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# State v. Cuthbert Appellant's Brief Dckt. 43593

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43593
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NO. CR 2013-15145
v.	)	
	)	
CODY EUGENE CUTHBERT,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Cody Cuthbert appeals, contending the district court abused its discretion when it denied his motion for leniency following an order relinquishing jurisdiction. He asserts that the district court did not sufficiently consider the fact that his issues in the rider program were due to his young age and associated immaturity, particularly in light of the fact that he had secured a sponsorer who was singularly qualified to help him address those issues moving forward. As such, this Court should reduce his sentence as it deems appropriate or, alternatively, remand this case for a new determination on Mr. Cuthbert's motion for leniency.

## Statement of the Facts & Course of Proceedings

Mr. Cuthbert was nineteen years old while this case proceeded in the district court. (Tr., p.5, Ls.18-19.) He was described as immature, demonstrated by poor judgment in several respects. (See, e.g., Presentence Investigation Report (*hereinafter*, PSI), pp.4, 20.)<sup>1</sup> This played out in his decision to have a sexual relationship with a girl who Mr. Cuthbert believed, based on her representations in social media, she was sixteen, was only fourteen years old. (R., pp.9, 91.) As a result of that relationship, Mr. Cuthbert ultimately pled guilty to injury to children. (R., pp.90-92.) It was his first felony conviction. (PSI, pp.29-31.) However, he had problems accepting responsibility for his conduct in that regard. (See, e.g., PSI, p.20 (the psychosexual evaluator noting that, while Mr. Cuthbert struggled to fully accept responsibility for his conduct, he was able to express remorse for his conduct).)

Nevertheless, the district court retained jurisdiction over Mr. Cuthbert so he might participate in a rider program. (R., p.97.) Unfortunately, Mr. Cuthbert's immaturity prevented him from completing that program. (See, e.g., Augmentation, pp.004-005 (discussing the nature of Mr. Cuthbert's formal disciplinary reports for contraband, indecent exposure, and horseplay).)<sup>2</sup> As a result, after only being in his main rider program (the Sex Offender Assessment Group) for one month (Augmentation, p.003),

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic PDF file "CONFIDENTIAL CERTIFICATE OF EXHIBITS CUTBERT 43593." Included in this file are the PSI report and all the documents attached thereto (police reports, psychosexual evaluation, etc.).

<sup>2</sup> Contemporaneous with this brief, Mr. Cuthbert has filed a motion to augment the record with the Addendum to the PSI prepared by the rider staff as a confidential exhibit. The copy of that document has page numbers in the upper right hand corner of the page, starting at 002 and ending at 017.

the district court relinquished jurisdiction over Mr. Cuthbert and executed his unified sentence of ten years, with three years fixed. (R., p.105.)

Mr. Cuthbert subsequently filed a timely motion for leniency pursuant to I.C.R. 35(b). (R., pp.108-09.) He provided two letters in support of that motion, one from himself providing his account of the incidents at the rider facility, and one from a sponsorer he had found who was willing to help him in his rehabilitative efforts. (Tr., p.5, Ls.15-17; Exhibits, pp.2-4.)<sup>3</sup> The sponsorer explained he had met Mr. Cuthbert through Mr. Cuthbert's sister, and he was singularly situated to help Mr. Cuthbert, as the sponsorer was a graduate of the drug court program himself, and so, understood what efforts were needed in this sort of rehabilitative process. (Exhibits, p.3.)

Nevertheless, the district court denied the motion for leniency because of Mr. Cuthbert's continuing struggles to accept responsibility and fully express remorse for his actions. (Tr., p.8, Ls.1-6; R., p.113.) However, in doing so, it recognized that Mr. Cuthbert's struggles in the rider program were, at least in part, due to his age and maturity level. (Tr., p.8, Ls.7-10.) Mr. Cuthbert filed a Notice of Appeal timely from the order denying his motion for leniency. (R., pp.115-17.)

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<sup>3</sup> The letters Mr. Cuthbert submitted in support of his motion for leniency were provided in a separate PDF document, which will be cited as "Exhibits."

## ISSUE

Whether the district court abused its discretion when it denied Mr. Cuthbert's motion for leniency.

## ARGUMENT

### The District Court Abused Its Discretion When It Denied Mr. Cuthbert's Motion For Leniency

In denying Mr. Cuthbert's motion for leniency, the district court focused on the fact that Mr. Cuthbert continued having problems expressing remorse and accepting responsibility for his actions in this case. (Tr., p.8, Ls.1-10.) However, those issues are only fully understood when viewed in light of Mr. Cuthbert's whole character. See, e.g., *State v. Helms*, 143 Idaho 79, 80 (Ct. App. 2006) (reiterating that sentencing decisions are to be reviewed while "focusing upon the nature of the offense and the character of the offender"). Notably, Mr. Cuthbert was only eighteen years old at the time of the offense and only nineteen as the case proceeded through the district court. (See, e.g., R., p.16; Tr., p.5, Ls.18-19.) As the Idaho Supreme Court has explained, a younger offender should be treated more leniently *because* he is still maturing. *State v. Dunnagan*, 101 Idaho 125, 126 (1980); see also *State v. Shideler*, 103 Idaho 593, 595 (1982) (explaining that a defendant's young age speaks significantly to his rehabilitative potential).

Mr. Cuthbert is squarely in that category. (See PSI, pp.4, 20.) As the district court indicated, that immaturity was also evident in Mr. Cuthbert's performance during his period of retained jurisdiction. (Tr., p.8, Ls.7-10; see also Augmentation.) Therefore, a proper sentencing determination necessarily needed to sufficiently address Mr. Cuthbert's immaturity in its evaluation of his character and the role it played in his

inability to accept responsibility. Contrary to the district court's conclusions, the psychosexual evaluator reported that Mr. Cuthbert had, in fact, expressed remorse for his actions. (PSI, p.20.)

Furthermore, Mr. Cuthbert presented new information with his motion for leniency which demonstrated he was in a better position to grow past that immaturity and learn to accept responsibility, and thus, begin fully rehabilitating. See *State v. Kellis*, 148 Idaho 812, 815 (Ct. App. 2010) (reaffirming that acknowledgment of guilt and acceptance of responsibility by the defendant are critical first steps toward rehabilitation). He had secured a sponsorer who, having been through a similar rehabilitation process himself, was singularly qualified to help Mr. Cuthbert in his efforts to rehabilitate. (Exhibits, p.3-4.) Additionally, since the sponsorer had become acquainted with Mr. Cuthbert through Mr. Cuthbert's family, the sponsorer could help Mr. Cuthbert tap that support network to improve his rehabilitative potential as well. (See, e.g., PSI, pp.32-33, 43-44 (letters of support from both Mr. Cuthbert's parents); PSI, p.3 (the psychosexual evaluator noting the issues in the family while Mr. Cuthbert was growing up, including Mr. Cuthbert's decision to serve time in a juvenile detention facility rather than return to his father's home based on alleged physical abuse).)

Since Mr. Cuthbert was in a better situation to begin maturing, and thus, rehabilitating, the district court abused its discretion by denying the motion for leniency based on just the historical fact that Mr. Cuthbert has had problems in that area rather than giving sufficient consideration to the opportunity for Mr. Cuthbert to actually address that issue in a timely manner. (See Tr., p.5, L.20 - p.6, L.23 (offering the district court several different sentencing alternatives which would allow for timely

rehabilitation).) As both the Idaho Supreme Court and the Idaho Court of Appeals have recognized, the timing of rehabilitative programming is an important consideration at sentencing. See, e.g., *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971); *State v. Nice*, 103 Idaho 89, 91 (1982); *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008). Because the district court's decision constituted an abuse of its discretion, this Court should vacate the order denying Mr. Cuthbert's motion for leniency and grant relief as it deems appropriate.

### CONCLUSION

Mr. Cuthbert respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new ruling on his motion for leniency.

DATED this 9<sup>th</sup> day of March, 2016.

/s/ \_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9<sup>th</sup> day of March, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

CODY EUGENE CUTHBERT  
INMATE #113089  
ISCC  
PO 70010  
BOISE ID 83707

STEPHEN S DUNN  
DISTRICT COURT JUDGE  
EMAILED BRIEF

KENT V REYNOLDS  
BANNOCK COUNTY PUBLIC DEFENDER  
EMAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
EMAILED BRIEF

/s/ \_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas